

The transfer of any canned software (or update of canned software) is considered the transfer of tangible personal property and will be subject to Retailers' Occupation Tax and Use Tax liability. Sales of canned software are taxable regardless of the means of delivery. See 86 Ill. Adm. Code 130.1935. (This is a GIL.)

April 20, 2006

Dear Xxxxx:

This letter is in response to your letter dated August 3, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing to request a legal opinion from State of Illinois Department of Revenue with regard to the application of your state's sales tax regulation ('Regulation'). The inquiry concerns whether TAXPAYER ('Taxpayer') must collect and remit Sales & Use taxes from its customers in the State of Illinois. Taxpayer is a corporation organized under the laws of the State of STATE with its principal office located in City, Illinois. Taxpayer has offices in twelve (12) states including a sales office in your state. Taxpayer currently collects and remits Sales & Use tax in your state. Please be advised that the purpose for this request is strictly for the internal business purposes of the Taxpayer and is not an object of pending or threatened litigation involving the Taxpayer.

Taxpayer owns, manages, markets, develops and licenses a proprietary database of entity, contact and editorial information for media outlets ('Data') and non-downloadable computer software ('Software') for accessing, managing and analyzing the Data *in conjunction with Customer supplied content*¹ on selected subjects from broadcast, Internet, print and radio sources. Customers access the Software and Data through Taxpayer's Internet web site located at <http://www.Bacons.com> (the 'Bacon's Web Site'). The Software and Data are primarily located and maintained in the State of Illinois.

There are four (4) basic scenarios involving the use of Taxpayer's Software and Data that may impact upon the application of your state's sales tax regulation:

Scenario 1. Customers access the Data and compile a contact list ('List') based on the Data using the Software. Customers may print, email or store this information electronically in their account using the Software.

Scenario 2. Using the List compiled in Scenario 1, Customers can create and manage the distribution of a direct communication with the contacts on the List using both electronic mail and printed media.

Scenario 3. Using the Software, Customers can input content regarding keywords and scope of review for media monitoring services. Based on the Customer input, Taxpayer reviews various media outlets and compiles a list of keyword impressions by date and location ('Impressions'). The Software allows customers to create, store and manage these results from media monitoring activities in their account using the Software.

Scenario 4. Using the List, the Impressions, and potentially additional input from the Customer, the Software can assess and evaluate various customer-defined parameters and produce reports for the customer in tabular and graphical formats, both printed and electronic.

Based on the foregoing scenarios, Taxpayer would like to know whether Taxpayer is subject to the application of the Regulation. I would greatly appreciate a formal response at your earliest convenience.

Please feel free to contact me with any questions or comments.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See 86 Ill. Adm. Code 130.101. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. See 86 Ill. Adm. Code 150.101. If no tangible personal property is being transferred to your client's customers, then no Illinois Retailers' Occupation Tax or Use Tax would apply. In general, the Department does not consider the viewing and downloading of tax and similar data over the Internet to be a transfer of tangible personal property.

Likewise, the Service Occupation Tax Act and Service Use Tax are imposed on the transfer of tangible personal property incident to sales of service. See 86 Ill. Adm. Code 140.101 and 160.101. If no tangible personal property is being transferred to your client's customers, then no Illinois Service Occupation Tax nor Service Use Tax would apply.

If your company charges its customers for line or transmission charges in conjunction with its services, then it may be subject to Telecommunications Excise Tax liability. See 86 Ill. Adm. Code 495.100 and letter ruling ST 04-0029-GIL. You may view the Department's "Sunshine Letter" rulings on the Department's internet website under the heading "Laws/Regs/Rulings."

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I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk

¹ Customer content includes key words of interest to customer and the relevant media outlets for key word results.